

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE SERVICES
Before the Commissioner of Financial and Insurance Services

In the matter of

XXXXX

Petitioner

File No. 86822-001

v

Midwest Security Life Insurance Company
Respondent

Issued and entered
this 28th day of January 2008
by Ken Ross
Acting Commissioner

ORDER

I
PROCEDURAL BACKGROUND

On December 19, 2007, XXXXX (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Services under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* The Commissioner reviewed the material submitted and accepted the request on December 26, 2007.

The Commissioner notified Midwest Security Life Insurance Company (Midwest) of the external review and requested the information used in making its adverse determination.

Because this case involves medical issues, the Commissioner assigned it to an independent review organization (IRO) which provided its analysis and recommendation to the Commissioner on January 11, 2008.

II
FACTUAL BACKGROUND

The Petitioner's health care benefits are defined in the certificate of group insurance (the certificate) issued by Midwest. Her coverage was effective July 1, 2005.

The Petitioner sought treatment from her physician in July 2007 for severe pre-menstrual cramps and heavy flow. A hysterosalpingogram revealed a conclusion of bilateral utero-tubal junctions. The Petitioner was referred to XXXXX, MD, for evaluation and treatment on August 20, 2007. The Petitioner underwent a series of procedures and laboratory tests (specifically procedure codes 74740, 58340, 76830, 83002, 82670, and 84144) for which Midwest denied coverage on the basis that they were treatment for infertility and therefore excluded under the terms of the certificate.

The Petitioner appealed the denial through Midwest's internal grievance process. Midwest reviewed the claims but maintained its denial and issued a final adverse determination on November 28, 2007.

III ISSUE

Is Midwest correct in denying coverage for certain procedures and laboratory tests provided from July 13, 2007, through October 15, 2007?

IV ANALYSIS

Petitioner's Argument

The Petitioner says in her request for external review that her physician told her the procedures and tests in question were done to determine the reason for her pelvic pain, possible endometriosis or ovulatory dysfunction, and not to check for infertility.

The Petitioner believes that these procedures and tests were medically necessary and were not for infertility and therefore Midwest should provide coverage.

Midwest Security Life Insurance Company's Argument

In its adverse determination, Midwest says that an independent medical review was conducted and, based on that review, it denied benefits for some of the services and treatment rendered to the Petitioner from July 13, 2007, through October 15, 2007, that were determined

to be related to infertility. Midwest says the documents provided show that the following procedures were for the evaluation of possible tubal and uterine factor infertility:

74740 – Hysterosalpingogram
58340 – Catheterization
76830 – Ultrasound Transvaginal
83002 – Gonadotropin Luteinizing Hormone (LH)
82670 – Estradiol
84144 – Progesterone

Midwest says the certificate contains this exclusion for infertility treatment:

LIMITATIONS

The term “Covered Expenses” as used for this coverage shall be deemed not to include any of the charges which are described below:

* * *

- (22) All charges relating to infertility diagnosis and treatment (including medications), artificial insemination, invitro fertilization, any treatment to promote conception and related tests/procedures; charges for contraceptives, contraceptive materials or devices except as covered under the Prescription Drug Card Benefit.

Midwest argues that the Petitioner’s services were for the treatment of infertility and therefore are not eligible for coverage.

Commissioner’s Analysis

In reviewing adverse determinations that involve medical issues, the Commissioner requests a review and recommendation from an IRO. In this case the IRO reviewer is board certified in obstetrics and gynecology, holds an academic appointment, and has been in practice for more than 10 years. It is the opinion of the IRO reviewer that Midwest’s denial of coverage for procedure codes 74740, 58340, 76830, 83002, 82670, and 84144 be upheld.*

The IRO reviewer observed, from the record of the Petitioner’s gynecological visit on August 20, 2007, that her hysterosalpingogram revealed a conclusion of bilateral utero-tubal

* The Petitioner also submitted a request on January 8, 2007, to have procedure codes 93976 and 89300 (color flow Doppler and post coital test) included in this external review. They were not included because the request was untimely.

junctions. The record also indicated that she had previously been pregnant three times but had not been able to conceive since then and it detailed a treatment plan.

The IRO reviewer noted that the Petitioner was referred for infertility and tubal obstruction, and that tubal cannulation was performed for the purpose of conception. Serial ultrasounds were performed for assessment of the follicles and ovulation for evaluation of fertility. The IRO reviewer further noted that the ultrasound was correlated with hormone levels to assess adequacy of preovulatory and ovulatory ovarian response.

It was the IRO reviewer's conclusion that the hysterosalpingogram, catheterization, transvaginal ultrasound, ovarian follicular study, luteinizing hormone, estradiol, and progesterone tests were related to treatment of infertility.

The Commissioner is not required in all instances to accept the IRO's recommendation. However, the IRO recommendation is afforded deference by the Commissioner; in a decision to uphold or reverse an adverse determination the Commissioner must cite "the principal reason or reasons why the Commissioner did not follow the assigned independent review organization's recommendation." MCL 550.1911(16)(b). The IRO reviewer's analysis is based on extensive expertise and professional judgment and the Commissioner can discern no reason why the recommendation should be rejected in the present case.

The Commissioner accepts the findings of the IRO reviewer that the Petitioner's services for the specified procedure codes from July 13, 2007, to October 15, 2007, were related to treatment for infertility and finds they are therefore excluded from coverage under the terms and conditions of the certificate.

V ORDER

The Commissioner upholds Midwest Security Life Insurance Company's August 12, 2007, final adverse determination.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the circuit court for the county where the covered person resides or in the Circuit Court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Services, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.